

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 217 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ARJUN PITAMBAR MAURYA

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner

Mr. U.R. Bhatt, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 05/05/98

ORAL JUDGEMENT

By this application under Article 226 of the Constitution of India, the petitioner calls in question the legality and validity of the order of detention dated 2nd March 1997 passed by the Police Commissioner for the city of Ahmedabad invoking his powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short "the Act"), pursuant to which the petitioner is arrested and at present kept under detention.

2. The facts which led the petitioner to file this petition may, in brief, be stated. The petitioner is a bootlegger. He was carrying out his illegal activities viz. providing liquor to different agencies and persons at different places. He wanted to have his business run smoothly and without any obstruction. Many persons in the society were asking him not to deal in liquor. He used to retaliate and harass those persons or beat them brutally and also say that if some one filed the complaint against him would have to face dire consequences. The people were feeling insecure. Because of the fear of violence every one used to keep his lips tight, and bear the miseries and woes. The Police Commissioner made inquiry. After inquisition, it was noticed that about 4 complaints were lodged against the petitioner with Amraiwadi police station as he was found in possession of liquor without pass or permit. The quantity of liquor was ranging from 5 litres to 116 litres. The Police Commissioner also found it necessary to record the statement of some of the witnesses so as to curb the wide network of the petitioner disturbing the public order but no one was willing to give the statement because of the fear of violence. Every one knew that if he would give the statement he would be put in fear of instant death or injury and might be killed. After considerable persuasion and that too when the assurance was given that their particulars disclosing their identity would be kept secret some of the persons gave the statements. The Police Commissioner was shocked to know perusing the statements recorded that the petitioner by his bootlegging activities was striking terror and because of his dread and terror no one had the courage to challenge him with the result public order was being disturbed and anti-social activities of the petitioner were going berserk. He therefore thought if fit to curb his activities initiating necessary action in law but he could realise that any action under general law if taken would be the futile exercise. The only way out was to pass the order in question. He in the result passed the order, arrested the petitioner and at present he is kept under detention.

3. On several grounds, the order in question is challenged, but at the time of hearing before me the parties tapered off their submissions confining to the only point whether the activities of the petitioner can be termed prejudicial to the maintenance of public order. According to the petitioner, even if it is believed that the petitioner is the bootlegger he cannot be preventively detained unless it is shown that activities

of the petitioner affect adversely or likely to affect adversely the maintenance of the public order. As it is not so shown here, the order is bad in law, and is required to be set aside. In reply to such submission, Mr. Bhatt, the learned AGP submitted that this is not a case of simple bootlegging. One should not forget or overlook the fact that because of such bootlegging activities hooch tragedies occur leading to massacre and causing serious injuries to the public health.

4. Before I proceed, the decision rendered by the Supreme Court in the case of Piyush Kantilal Mehta v. Police Commissioner - AIR 1989 S.C. 491 may be referred to. It is held therein that even if the detenu is a bootlegger within the meaning of Section 2 (b) of the Act by that mere fact he cannot preventively be detained under the provisions of the Act unless it is shown that his activities as a bootlegger affect adversely or likely to affect adversely the maintenance of the public order. The detenu may be carrying on bootlegging activities, or using force or violence, or at times creating an atmosphere of fear and terror by beating the innocent people so as to have the sale of liquor illegally, or indulging in minor incidents of beating, or is keeping knife with him or may not be afraid of the police and the people may be considering him head-strong person, but his such activities cannot be termed anti-social, unless it is shown that by his such activities there has been a feeling of insecurity amongst the general public, and he had thereby created panic or psychosis in the minds of the members of the public upsetting the tempo of the public life of the community giving rise to the challenge to the maintenance of public order. In that case, because of the minor incidents of violence, bickering and beating it was held that for want of other material on record showing that the detenu had created feelings of insecurity and panic disturbing the tempo of life of community the order of detention passed was not the challenge to the maintenance of the public order and therefore the order of detention was quashed and set aside.

5. In the case on hand, nothing has been alleged or no other material is placed before me indicating that by different subversive and nefarious activities the petitioner disturbed the tempo of the life of the community and thereby created the problems qua public order. What is sought to be impressed upon is that the petitioner is a bootlegger and is dealing in liquor in huge quantity. It may be that at times for selling the liquor illegally he may have used force or may have

beaten some persons, but that by itself would not amount to creating the problem of public order or a challenge to the maintenance of the public order. When that is the case, in view of the above referred decision of the Supreme Court in Piyush Kantilal Mehta's case, the order of detention in this case cannot be maintained and the detention must be held to be illegal and unconstitutional.

6. For the aforesaid reasons, the application is allowed. The order of detention dated 2nd December 1997 is hereby quashed and set aside. The petitioner is ordered to be set at liberty forthwith if no longer required in any other case. Rule accordingly made absolute.

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(rmr).